

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

PEABODY ENERGY CORPORATION

and

ARCH COAL, INC.,

Defendants.

Case No. 4:20-cv-00317-SEP

**DEFENDANTS' UNOPPOSED MOTION TO FILE UNDER SEAL
DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Defendants Peabody Energy Corporation and Arch Resources, Inc. (f/k/a Arch Coal, Inc.) (together, "Defendants") respectfully move the Court for an order pursuant to Rule 5.2 of the Federal Rules of Civil Procedure and Rule 13.05 of the Local Rules of the United States District Court for the Eastern District of Missouri permitting Defendants to file under seal, until further order, their Proposed Findings of Fact and Conclusions of Law.

The Proposed Findings of Fact and Conclusions of Law contain "confidential material" as that term is defined in the Modified Protective Order the court entered on April 3, 2020, (Dkt. No. 110 ¶ 1) that Defendants and non-parties produced during the course of discovery and Plaintiff Federal Trade Commission's (the "FTC") investigation. *See* Modified Protective Order ¶ 9 ("In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall be so informed by the Party filing such papers, and such papers shall be filed under seal."). Permitting Defendants to file the Proposed Findings of Fact and Conclusions of Law under seal is also appropriate under this Circuit's decisions regarding sealing and redaction of judicial records. *See IDT Corp. v. eBay*, 709 F.3d 1220, 1223-24 (8th Cir. 2013); *Webster Groves Sch. Dist. v. Pulitzer Publ'g Co.*, 898 F.2d 1371, 1376-77 (8th Cir. 1990).

In accordance with Local Rule 3.04, counsel for Defendants discussed this motion with counsel for the FTC. Defendants and the FTC agree that the FTC does not oppose this motion on the understanding that Defendants will serve a courtesy copy of the Proposed Findings of Fact and Conclusions of Law to the FTC at the time of filing, and that Defendants will file a redacted copy of the Proposed Findings of Fact and Conclusions of Law as soon as it is practicable.

ARGUMENT

“[T]he common-law right of access applies to judicial records in civil proceedings.” *IDT Corp.*, 709 F.3d at 1222. “This right of access is not absolute, but requires a weighing of competing interests.” *Webster Grove*, 898 F.2d at 1376 (“When the common law right of access to judicial records is implicated, we give deference to the trial court rather than taking the approach of some circuits and recognizing a strong presumption favoring access.” (internal quotation marks omitted)). “Where the common-law right of access is implicated, the court must consider the degree to which sealing a judicial record would interfere with the interests served by the common-law right of access and balance that interference against the salutary interests served by maintaining confidentiality of the information sought to be sealed.” *IDT Corp.*, 709 F.3d at 1223.

Here, as this Court already repeatedly recognized in connection with other motions to file under seal, *see, e.g.*, Dkt. Nos. 151, 170, 173, 386, balancing these interests favors granting Defendant’s motion to file the Proposed Findings of Fact and Conclusions of Law under seal. The Proposed Findings of Fact and Conclusions of Law contain “confidential and competitively sensitive information” that Defendants and non-parties “produced subject to a protective order.” *IDT Corp.*, 709 F.3d at 1223-24 (internal quotation marks omitted). Defendants and non-parties have a strong interest in preventing disclosure of these commercially sensitive materials, which include, *inter alia*, non-public financial information and forward-looking strategic plans. The public, in contrast, has nothing more than a “generalized interest in access” that does not outweigh Defendants’ and non-parties’ strong interest in avoiding disclosure of their confidential material. *See id.* at 1224; *see also, e.g., AT&T Servs., Inc. v. Max Retrans LLC*, No. 4:19-CV-

01925-NCC, 2019 WL 7372254, at *2 (E.D. Mo. Dec. 31, 2019); *Sigma-Aldrich Co., LLC v. Spittler*, No. 4:15-CV-1158-RLW, 2016 WL 3227675, at *2 (E.D. Mo. June 9, 2016).

Nevertheless, to preserve the public right of access to the extent possible, Defendants will adhere to the following procedure: Defendants will serve a courtesy copy of the Proposed Findings of Fact and Conclusions of Law on the FTC at the time of filing. As soon as practicable after filing, Defendants will file a redacted version of the Proposed Findings of Fact and Conclusions of Law. *See* Modified Protective Order ¶ 9 (“Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material.”). Public access to a redacted version of the Proposed Findings of Fact and Conclusions of Law provides adequate protection to the public’s generalized interest in access. *See IDT Corp.*, 709 F.3d at 1224; *Sigma-Aldrich Co.*, 2016 WL 3227675, at *2.

CONCLUSION

Given the nature of the confidential and competitively sensitive information contained in Proposed Findings of Fact and Conclusions of Law, Defendants respectfully request that the Court issue an order directing the Clerk of the Court to file the Proposed Findings of Fact and Conclusions of Law under seal, until further order.

A proposed order is attached.

Dated: August 3, 2020

Respectfully submitted,



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